

Atty. Docket No. YOR920000168US1
(590.014)

REMARKS

In the Office Action dated August 25, 2005, pending Claims 1-27 were rejected and the rejection made final. Claims 13 and 26 stand rejected under 35 U.S.C. §112, second paragraph; Claims 1-3, 6-12, 14-16, 19-25 and 27 stand rejected under 35 U.S.C. §103(a); and Claims 4-5 and 17-18 have been indicated by the Examiner as being allowable if rewritten in independent form. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks.

The Section 112 Rejection

Claims 13 and 26 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as their invention. In particular, the Office has indicated it would not withdraw the rejections in light of the Applicants' previous remarks, "[b]ecause 1) only assertion is not sufficient evidence for overcoming the rejection; 2) leaving a variable indefinite in a claim leads to the whole equation in the claim to be indefinite." (*Office Action*, p. 3)

Applicants would first like to suggest that the evidentiary standard for the withdrawal of the rejections applied in this instance was incorrect. As indicated in the MPEP, "If upon review of a claim in its entirety, the examiner concludes that a rejection under 35 U.S.C. 112, second paragraph, is appropriate, such a rejection should be made and an analysis as to why the phrase(s) used in the claim is "vague and indefinite" should

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be included in the Office action. If applicants traverse the rejection, with or without the submission of an amendment, and the examiner considers applicant's arguments to be persuasive, the examiner should indicate in the next Office communication that the previous rejection under 35 U.S.C. 112, second paragraph, has been withdrawn and provide an explanation as to what prompted the change in the examiner's position (e.g., examiners may make specific reference to portions of applicant's remarks that were considered to be the basis as to why the previous rejection was withdrawn)." MPEP 2173.02 [R-3] Therefore, maintaining a 35 U.S.C. §112, second paragraph rejection for lack of evidentiary support beyond Applicants' argument is improper.

Regarding the Office's second reason for not withdrawing the rejections, the Applicants submit the variable in question is not indefinite for purposes of meeting the requirements of 35 U.S.C. §112, second paragraph. Specifically, 35 U.S.C. §112, second paragraph states, "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." *Id.* Furthermore, where allowable subject matter is found to have been disclosed, an examiner "[s]hould allow claims which define the patentable subject matter with a reasonable degree of particularity and distinctness. Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire." MPEP 2173.02 "In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second

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paragraph, by providing clear warning to others as to what constitutes infringement of the patent. See, e.g., *Solomon v. Kimberly-Clark Corp.*, 216 F.3d 1372, 1379, 55 USPQ2d 1279, 1283 (Fed. Cir. 2000). See also *In re Larsen*, No. 01-1092 (Fed. Cir. May 9, 2001) (unpublished)" *Id.*

In this instance the lack of a specific explanation or definition of the variable C in Claims 13 and 26 does not mitigate the notice function provided by the claims as to the subject matter being claimed. One skilled in the art would be appraised of the metes and bounds of the claimed invention. Moreover, the meaning of C is, in any event, implicitly provided in the claims' formulas, as well as the specification of the invention, which is to be borne in mind when making such rejections. Broadly speaking, C stands for the number of background models in a particular system. This is evident to one skilled in the art because the formulas' summation index is 1 through C and the S function of the summation affects BG_i where BG_i denotes the i-th background model. Thus, C must be the number of background models. Since C has only one reasonable meaning as provided for in the Claims it is not indefinite. Having previously found Claims 13 and 26 to be directed toward patentable subject matter, the Applicants' respectfully request the Examiner withdraw the present rejections and again find the Claims to be immediately allowable.

The Section 103 Rejection

Claims 1-3, 6-12, 14-16, 19-25 and 27 continue to stand rejected under 35 U.S.C. §103(a) over Goldenthal et al. in view of Newman et al. The Applicants' earlier remarks,

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previously submitted in the Amendment dated June 16, 2005, remain applicable and are incorporated herein by reference. Applicants' ask that the Examiner reconsider the points previously made regarding the withdrawal of the present 103 rejections. In particular, Applicants would like to draw the Examiner's attention to the fact that the independent Claims' "[a]scertaining step comprising the steps of: determining, for each frame and each level of phonetic detail of the target speaker model, a likelihood value..." is simply not found in the Newman et al. prior art reference cited for teaching this element. For this reason, as well as those previously articulated by the Applicants, the Examiner is respectfully requested to reconsider the current rejections and find that they should be withdrawn thereby allowing the presently claimed invention to benefit from the patent protection currently due.

Conclusion

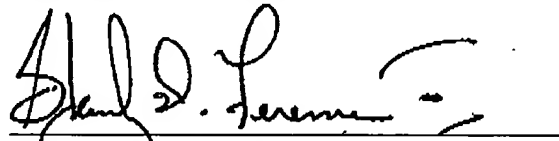
Applicants acknowledge that Claims 4-5 and 17-18 were indicated by the Examiner as being allowable if rewritten in independent form. Applicants reserve the right to file new claims of such scope at a later date that would still, at that point, presumably be allowable.

In view of the foregoing, it is respectfully submitted that Claims 1, 14 and 27 fully distinguish over the applied art and is thus are in condition for allowance. By virtue of dependence from what are believed to be allowable independent Claims 1 and 14, it is respectfully submitted that Claims 2-13 and 15-26 are also presently allowable.

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In summary, it is respectfully submitted that the instant application, including Claims 1-27, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. In the unlikely event, however, it appears the claims will not be allowed, the Office is invited to call the undersigned to discuss the claims prior to the issuance of a further Office Action.

Respectfully submitted,



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